

## Department of the Army, DoD

## §516.66

(3) The impact upon combat readiness and safety.

(4) Consideration of each criminal, civil, contractual, and administrative remedy available, and documentation of those remedies, either planned, in progress, or completed.

(5) Restrictions on the pursuit of any remedies such as grand jury information or possible compromise of the investigation.

(d) When remedies plans are received by PFD they will be coordinated with the headquarters of the appropriate DOD criminal investigative organization involved.

(e) Testing necessary to support the investigation and remedies plan should comply with figure H-3, appendix G, to this part.

### §516.65 Litigation reports in civil recovery cases.

(a) All substantiated PFI cases will be evaluated by PFAs to determine whether it is appropriate to recommend civil recovery proceedings.

(b) Recovery should be considered under both statutory and common law theories, including but not limited to the following:

- (1) False Claims Act, 31 USC 3729.
- (2) Anti-Kickback Act, 41 USC 51.
- (3) Sherman Act, 15 USC 1-7.
- (4) Racketeer Influenced and Corrupt Organizations Act, 18 USC 1961-1968.
- (5) Common law fraud.
- (6) Unjust enrichment.
- (7) Constructive trust.

(8) Cases where contracts have been procured in violation of the conflict of interest statute, 18 USC 218. See *K&R Engineering Co. v. United States*, 616 F.2d 469 (Ct. Cl., 1980).

(c) When civil recovery appears possible, PFD should be consulted to determine if a litigation report is necessary. If requested by PFD, the report should summarize the available evidence and applicable theories of recovery and be prepared under §516.23 of this part. To avoid unnecessary duplication of effort, recovery reports may include and make liberal references to other reports previously prepared on a given case such as the DFARS 209.406-3 (48 CFR 209.406-3) report.

(d) The MACOM PFI coordinator and PFA will monitor all civil fraud recovery

efforts throughout the command and will provide training and technical assistance as required. Status reports of all civil fraud recovery efforts will be provided through channels as required by PFD.

### §516.66 Administrative and contractual actions.

(a) The following remedial options should be considered in response to confirmed fraudulent activity:

- (1) Contractual.
  - (i) Termination of contract for default.
  - (ii) Nonaward of contract based upon a finding of contractor nonresponsibility. (If this appears to be a valid option, a DFARS 209.406-3 (48 CFR 209.406-3) report must be prepared where contractor nonresponsibility is based on lack of integrity).
  - (iii) Rescission of contract.
  - (iv) Revocation of acceptance.
  - (v) Use of contract warranties.
  - (vi) Withholding of payments to contractor. In the case of withholding pursuant to DFARS 2032.173, the Chief, PFD, is the Army Remedy Coordinating Official.
  - (vii) Offset of payments due to contractor from other contracts.
  - (viii) Revocation of facility security clearances.
  - (ix) Increased level of quality assurance.
  - (x) Refusal to accept nonconforming goods.
  - (xi) Denial of claims submitted by contractors.
  - (xii) Removal of contract from automated solicitation or payment system.
- (2) Administrative.
  - (i) Change in contracting forms and procedures.
  - (ii) Removal or reassignment of government personnel.
  - (iii) Review of contract administration and payment controls.
  - (iv) Revocation of warrant of contracting officer.
  - (v) Suspension of contractor.
  - (vi) Debarment of contractor.
- (b) In cases which are pending review or action by DOJ, PFAs should coordinate with the DOJ attorney handling the case prior to initiating any contractual or administrative remedy. In